

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
Medwiz Specialty, LLC.,)	Date: December 18, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-751
)	Decision No. CR2048
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the request for hearing filed by Petitioner, Medwiz Specialty, LLC. I do so because the Centers for Medicare & Medicaid Services (CMS) rescinded its adverse determination. Consequently, nothing is left for me to hear and decide.

I. Background

Petitioner applied to participate in the Medicare program as a supplier of items or services. That application was denied and, on July 28, 2009, a hearing officer issued a reconsideration determination sustaining the denial. Petitioner then requested a hearing and the case was assigned to me for a hearing and a decision. I ordered the parties to file pre-hearing exchanges of briefs and exhibits addressing the issues in the case.

However, and in the interim, CMS reviewed the hearing officer's reconsideration determination and determined that, in fact, Petitioner was in compliance with enrollment requirements. Therefore, on October 29, 2009 a Medicare contractor notified Petitioner that it was in compliance and that Petitioner would be enrolled as a supplier effective June 4, 2009. CMS then moved to dismiss the request for hearing arguing that the issues raised by Petitioner were moot. Petitioner did not reply to the motion.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether Petitioner has a right to a hearing.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

1. Petitioner has no right to a hearing because CMS rescinded its adverse determination.

A prospective supplier who is dissatisfied with a determination by CMS or a Medicare contractor to deny its application for enrollment is entitled to a hearing to challenge the adverse determination. 42 C.F.R. §§ 498.3(b)(17); 498.5(d)(1), (2). However, there is no continuing right to a hearing where CMS rescinds its adverse determination and gives the party requesting a hearing that which it originally sought.

The undisputed facts of this case are that CMS rescinded the adverse determination denying Petitioner's enrollment as a Medicare supplier. That action by CMS extinguished whatever hearing right Petitioner may have had.

2. I dismiss Petitioner's hearing request because Petitioner has no right to a hearing.

An administrative law judge may dismiss a request for a hearing where the party who files the request has no right to a hearing. 42 C.F.R. § 498.70(b). Petitioner has no right to a hearing and, therefore, I dismiss its request.

/s/

Steven T. Kessel
Administrative Law Judge